

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION**

UNITED STATES OF AMERICA,

v.

(1) GILBERT GARZA JR.,
Defendant.

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MO:19-CR-00166-DC

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

BEFORE THE COURT is Defendant Gilbert Garza Jr.'s Motion to Suppress filed on October 29, 2019. (Doc. 34). Defendant argues that the charges filed against him are based on a warrantless traffic stop of the vehicle Defendant was driving. *Id.* at 1. Defendant seeks to suppress all evidence obtained as a result of the stop, including physical evidence, any statements made by Defendant, and the "officer sense impressions." *Id.* The Government filed a Response opposing the Motion on October 31, 2019. (Doc. 36). On November 7, 2019, the Court rescheduled the hearing on the instant Motion for November 14, 2019, at 2:00 p.m.¹ (Doc. 37). After due consideration of the parties' filings, the arguments presented at the hearing, the record, and the applicable law, the Court **DENIES** Defendant's Motion to Suppress. (Doc. 34).

I. BACKGROUND

The Indictment charges Defendant with one count of possession with intent to distribute a controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A), and with one count of possession of a firearm in furtherance of a drug trafficking crime, in violation of Title 18, United States Code, Section 924(c)(1). (Doc. 12).

Defendant asserts that on or about July 5, 2019, he was stopped for an alleged traffic violation—failing to signal intent to turn 100 feet prior to executing a right-hand turn. (Doc. 34)

1. The Court originally scheduled the hearing for November 14, 2019, at 10:00 a.m. (Doc. 35).

at 2). Defendant alleges that Officer L. Mosby (Officer Mosby), the officer who conducted the stop, stated that he only stopped Defendant because he had “failed to signal 100 feet prior to turning.” *Id.* at 2. After Officer Mosby requested Defendant’s driver’s license, he returned to his patrol car. *Id.* However, instead of first contacting dispatch regarding Defendant to legitimately further the traffic stop, Officer Mosby took a photo of Defendant’s driver’s license with his phone and sent the photo to a third party via text. *Id.* Two minutes into the traffic stop, Officer Mosby finally contacted dispatch and provided Defendant’s driver’s license information. *Id.* Defendant contends dispatch cleared Defendant’s license. *Id.* Four minutes into the traffic stop, Officer Mosby turned off the audio in his bodycam and called someone on his cellphone. *Id.* Officer Mosby sat in his patrol car for roughly four minutes talking on his cellphone while his bodycam was muted. *Id.* at 2–3. A little over eight minutes after being stopped, Officer Mosby approached Defendant’s vehicle, asked Defendant to step out, and placed Defendant in front of his patrol car. *Id.* at 3. At this time, the bodycam remained muted. *Id.* Eleven minutes into the stop, Officer Mosby made another phone call. *Id.* At no point, however, did Officer Mosby write a citation or take action to effectuate the traffic stop. *Id.* Fourteen minutes into the stop, Officer Mosby reactivated the audio on his bodycam only to deactivate it again nineteen minutes into the stop. *Id.* Officer Mosby then questioned Defendant and arrested him. *Id.* During the arrest, Officer Mosby found a large sum of money and a methamphetamine pipe on Defendant. *Id.* Thirty-eight minutes into the stop, a canine unit, including Officer Owens, arrived at the scene. *Id.* A dog-sniff was conducted on both the exterior and interior of Defendant’s vehicle. *Id.* Once the dog-sniff was completed, the officers searched Defendant’s vehicle and found a black bag containing methamphetamine and a gun. *Id.*

Defendant argues that Officer Mosby lacked probable cause to stop the vehicle Defendant was driving because no traffic violation occurred, that the extension of the traffic stop to investigate matters unrelated to the alleged traffic violation was not supported by probable cause and was thus unconstitutional, that Officer Owens searched the car without a warrant and without Defendant's consent, and that the officers did not have probable cause to continue searching Defendant's vehicle because the canine did not alert to drugs.

The Government responds, clarifying that Defendant was under surveillance at the time of the traffic stop. (Doc. 36). On July 5, 2019, a confidential source (CS) notified Detective Matthew Sedillo (Officer Sedillo) that he could purchase heroin from a person by the name of "Gee Garza." *Id.* at 1. The Midland Police Department Narcotics and Directed Patrol Team arranged a controlled purchase. *Id.* at 2. The controlled purchase took place later that day. *Id.* While Officer Sedillo met with the CS to retrieve the heroin and recording device used during the transaction, Detective Jamie Dolan (Officer Dolan) maintained surveillance on Defendant. *Id.* Officer Dolan observed the alleged traffic violation and notified Officer Mosby who then conducted a traffic stop. *Id.* Officer Sedillo arrived at the traffic stop shortly after it was initiated. *Id.* As explained by Defendant, the officers searched Defendant and found several thousand dollars in cash and a methamphetamine pipe on his person. *Id.* After Defendant denied consent to search his vehicle, the officers called a canine unit. *Id.* The officers searched the vehicle and found a black bag in the front passenger seat that contained narcotics and a Taurus .38 caliber revolver. *Id.*

The Government contends that Defendant was under surveillance throughout the narcotics transaction and the traffic stop. *Id.* at 4. Thus, even if there was no traffic violation, Officers Dolan and Sedillo had probable cause to arrest Defendant for possession with intent to

distribute. *Id.* Moreover, after searching Defendant and finding a large sum of cash and a methamphetamine pipe on his person, the officers had probable cause to believe that the fruits and instrumentalities of the narcotics transaction would be found in the vehicle. *Id.* Accordingly, Defendant's arrest and the search of Defendant's vehicle were supported by probable cause. *Id.*

II. LEGAL STANDARD

The Fourth Amendment protects individuals from unreasonable searches and seizures. U.S. Const. amend. IV; *United States v. Grant*, 349 F.3d 192, 196 (5th Cir. 2003). The exclusionary rule allows a defendant to suppress the evidentiary fruits of a violation of his Fourth Amendment rights. *United States v. Pack*, 612 F.3d 341, 347 (5th Cir.), *modified on other grounds*, 622 F.3d 383 (5th Cir. 2010).

“The bulwark of Fourth Amendment protection, of course, is the Warrant Clause, requiring that, absent certain exceptions, police obtain a warrant from a neutral and disinterested magistrate before embarking upon a search.” *Franks v. Delaware*, 438 U.S. 154, 164 (1978). “In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement.” *Riley v. California*, 134 S. Ct. 2473, 2482 (2014). The movant bears the burdens of production and persuasion in a suppression hearing. *United States v. de la Fuente*, 548 F.2d 528, 533 (5th Cir. 1977); *United States v. Hidalgo*, 385 F. App'x 372, 375 (5th Cir. 2010). However, “[w]hen the government searches or seizes a defendant without a warrant, the government bears the burden of proving, by a preponderance of the evidence, that the search or seizure was constitutional.” *United States v. Guerrero-Barajas*, 240 F.3d 428, 432 (5th Cir. 2001). “The Fourth Amendment exclusionary rule operates to suppress only evidence derived from a Fourth Amendment violation.” *United States v. Scroggins*, 599 F.3d 433, 446 (5th Cir. 2010). Evidence obtained as a direct result of an unconstitutional search or seizure is plainly

subject to exclusion as is evidence later discovered and found to be derivative of any illegality or fruit of the poisonous tree. *Segura v. United States*, 468 U.S. 796, 804 (1984).

Traffic stops are considered seizures within the meaning of the Fourth Amendment but are more similar to investigative detentions than formal arrests. *United States v. Valadez*, 267 F.3d 395, 397 (5th Cir. 2001). In such instances, limited searches and seizures are justified when the police have reasonable suspicion supported by articulable facts that a crime has been or is being committed. *See United States v. Vickers*, 540 F.3d 356, 360–61 (5th Cir. 2008). The legality of traffic stops for Fourth Amendment purposes is analyzed under the two-part inquiry articulated by the Supreme Court in *Terry*. *See United States v. Spears*, 636 F. App'x 893, 898 (5th Cir. 2016). First, the Court determines whether stopping the vehicle was initially justified by reasonable suspicion. *See id.* Second, the Court analyzes whether the officer's subsequent actions were reasonably related in scope to the circumstances that justified the stop of the vehicle in the first place. *See id.*

III. DISCUSSION

Defendant challenges the stop, search, and seizure of his vehicle and his person. (*See generally* Doc. 34). For the reasons stated below, the Court finds that the stop was justified at its inception by reasonable suspicion that a traffic violation and drug crime occurred. Moreover, the Court finds that the officers' subsequent actions, including searching and arresting Defendant and searching the vehicle driven by Defendant, were reasonably related in scope not only to the traffic stop but also to the drug crime investigation.

A. The Stop was Justified

“For a traffic stop to be justified at its inception, an officer must have an objectively reasonable suspicion that some sort of illegal activity, such as a traffic violation, occurred or is about to occur before stopping the vehicle.” *United States v. Lopez-Moreno*, 420 F.3d 420, 430 (5th Cir. 2005). “Even if a traffic violation has not been committed, an officer may stop a vehicle for investigatory purposes if he or she has a reasonable suspicion of criminal activity.” *Spears*, 636 F. App’x at 898 (citing *United States v. Zavala*, 541 F.3d 562, 574 (5th Cir. 2008)). “A ‘reasonable suspicion’ need not rise to the level of probable cause.” *See Zavala*, 541 F.3 at 574 (citing *Lopez-Moreno*, 420 F.3d at 430). The Government argues that stopping the vehicle driven by Defendant was justified because Officer Mosby had reasonable suspicion of a traffic violation and drug crime. (Doc. 36 at 4).

First, the Government contends that Defendant committed a traffic violation. Specifically, that Officer Mosby pulled Defendant over after Officer Dolan communicated to him that he had observed Defendant “failing to use a signal 100 feet prior to turning.” *Id.* at 2. At the hearing, Officer Dolan unequivocally testified that he observed Defendant fail to signal a turn and that he communicated the traffic violation to Officer Mosby. Officer Mosby also testified that he effected the stop after Officer Dolan notified him that Defendant committed a traffic violation. On this basis, stopping the vehicle driven by Defendant was “initially justified by reasonable suspicion that he had committed a traffic violation.” *Spears*, 636 F. App’x at 899 (justifying a stop where one officer testified that a DEA officer communicated to him that the defendant committed a traffic violation and where the DEA officer also testified that he witnessed the defendant commit the traffic violation); *see also United States v. Wali*, 811 F. Supp. 2d 1276, 1288 (N.D. Tex. 2011) (explaining the collective knowledge doctrine which “anticipates situations where one law enforcement officer relays a bulletin of criminal activity

and calls upon other law enforcement officers for assistance” and allows the assisting officers to rely on the relaying officer’s report and “proceed with reasonable suspicion even though they may not have possessed the personal knowledge of the relaying officer”).

Second, the Government alleges that the stop was justified because the officers had reasonable suspicion that Defendant was involved in a narcotics transaction minutes before the stop. (*See* Doc. 36 at 4). Officers Dolan and Sedillo testified that the Midland Police Department Narcotics and Directed Patrol Team engineered a controlled purchase after a CS informed them that the CS could purchase heroin from Defendant. The controlled purchase verified the CS’s tip. When the vehicle Defendant was driving was stopped, Defendant was still under surveillance in relation to the narcotics transaction while one of the officers met with the CS to retrieve the heroin purchased from Defendant and the recording device utilized during the transaction. *Id.* The officers observed Defendant leave the location where the narcotics transaction took place in the vehicle, Officer Dolan observed the traffic violation occur shortly after that and notified Officer Mosby, and Officer Mosby effected a traffic stop of the same vehicle driven by Defendant “less than a mile and a half from the narcotics transaction.” *Id.* at 2. Moreover, Officers Sedillo and Dolan testified that they were communicating regarding the controlled purchase via radio. Officer Sedillo informed Officer Dolan when he verified the controlled purchase had taken place. Finally, Officer Mosby testified that he was following the narcotics team’s communications via radio.

Based on these facts, the Court finds that Officer Mosby also stopped the vehicle because he had reasonable suspicion that Defendant was involved in a drug crime. *United States v. Powell*, 732 F.3d 361, 371 (5th Cir. 2013) (finding an officer was justified in effecting a stop based on an informant’s tip with a strong foundation when the officer verified the content of the

tip); *see also Zavala*, 541 F.3d at 574 (“[I]t was constitutionally permissible for [an officer with information obtained from a surveillance team] to order [an] uniformed officer to stop the [vehicle] despite the fact that [defendant] did not commit any traffic violation.”).

In sum, the stop was justified by Officer Mosby’s reasonable suspicion that a traffic violation and drug crime occurred.

B. Prolonging the Stop

A traffic stop cannot last longer than necessary “to effectuate the purposes of the stop.” *Florida v. Royer*, 460 U.S. 491, 499 (1983). Further, the officers’ actions must be, in totality, objectively justifiable. *United States v. Tellez*, 11 F.3d 530, 532 (5th Cir. 1993) (citing *United States v. Wangler*, 987 F.2d 228, 230 (5th Cir. 1993)).

For the same reasons Officer Mosby was justified in stopping Defendant’s vehicle, his subsequent actions were justified. *See Powell*, 732 F.3d at 371 (holding an officer with reasonable suspicion of a drug crime is justified in taking the time to process the initial traffic violation “and delay in waiting for the canine unit”). Specifically, Officer Mosby would be justified in contacting dispatch to run a check on Defendant’s driver’s license and prolonging the investigatory detention to wait for the canine unit and further investigate the drug crime. *Id.* (“Reasonable suspicion of the drug crime provided an independent basis for prolonging the investigatory detention beyond the parameters of a run-of-the-mill traffic stop.”).

Defendant’s argument that Officer Mosby unlawfully prolonged the stop is premised on the reasonableness of the investigatory detention based on the traffic violation justification alone.² (Doc. 34 at 5–8). Specifically, Defendant argues that Officer Mosby improperly

2. Defendant contends that Officer Mosby defined the scope, duration, and purpose of the stop when he notified Defendant that the only reason for the stop was a traffic violation. (Doc. 34 at 6). However, Defendant provides no support for this proposition. Moreover, the Supreme Court explained that “subjective intent alone . . . does not make otherwise lawful conduct illegal or unconstitutional.” *See Scott v. United States*, 436 U.S. 128, 138 (1978). Rather,

conducted the traffic stop and illegally elongated the stop contrary to standards for vehicle stops. *Id.* However, the Fifth Circuit has refused to reach that argument in similar circumstances, reasoning that when police officers have “reasonable suspicion of [a] drug crime, providing an adequate basis for the scope and duration of the stop from the outset, [it] need not reach [such] arguments.” *Powell*, 732 F.3d at 371 n.5. Accordingly, the Court need not reach Defendant’s contention that the stop was unreasonably prolonged. Officer Mosby had reasonable suspicion of a drug crime based on the information provided to him by other officers and thus he was justified in prolonging the investigatory detention “beyond the parameters of a run-of-the-mill traffic stop” to wait for the canine unit. *Id.*

C. There was Probable Cause to Arrest Defendant and Search the Vehicle

Defendant next argues that the officers seized Defendant and searched the vehicle “without probable cause, consent, or a valid exception to the Fourth Amendment.” (Doc. 34 at 1, 8). The Government counters that the officers had probable cause to arrest Defendant. (Doc. 36 at 4). And, that once they searched Defendant’s person and found drug paraphernalia and a substantial amount of cash, the officers had probable cause to believe that the fruits and instrumentalities of the narcotics transaction would be found in the vehicle Defendant utilized during the narcotics transaction. *Id.* Accordingly, the constitutionality of the search of Defendant’s vehicle is, in part, dependent on the lawfulness of Defendant’s arrest.

A warrantless search must be based on probable cause. *United States v. Castro*, 166 F.3d 728, 733 (5th Cir. 1999) (en banc). “Probable cause exists when the totality of facts and circumstances within a police officer’s knowledge at the moment of arrest are sufficient for a reasonable person to conclude that the suspect had committed, or was in the process of

the officer’s actions, in this case, prolonging the stop, are valid “as long as the circumstances, viewed objectively, justify that action.” *Id.* (citing *United States v. Robinson*, 414 U.S. 218 (1973)). Accordingly, the Court finds Defendant’s argument unpersuasive.

committing, an offense.” *Id.* The Court finds that Defendant’s arrest and the search incident to his arrest were lawful. *See Arizona v. Gant*, 556 U.S. 332, 338 (2009) (“Among the exceptions to the warrant requirement is a search incident to a lawful arrest.”). The officers involved in the narcotics transaction verified that the controlled purchase took place by searching the CS and collecting the recording device utilized during the transaction. Officer Dolan also witnessed Defendant commit a traffic violation. This is sufficient to establish probable cause that Defendant committed a traffic violation and drug crime—each a basis to arrest Defendant.

The Government also alleges that Defendant consented to the search of his person. Defense counsel argues that the bodycam was muted when Officer Mosby allegedly obtained consent from Defendant to search his person and thus the Court cannot determine whether Defendant consented to a search of his person. However, Officer Mosby testified that he would not have searched Defendant without his consent. The Court finds Officer Mosby’s testimony credible. However, even without consent, the search of Defendant’s person is justified as a search incident to arrest. *See, e.g., Rawlings v. Ky.*, 448 U.S. 98, 111 (1980) (reasoning that it is not “particularly important that the search preceded the arrest” if the officers had probable cause to arrest the defendant before the search and “the formal arrest followed quickly on the heels of the challenged search”).

Next, the Court must determine whether Officer Mosby had probable cause to search the vehicle driven by Defendant during the drug transaction and when he was stopped. “[R]easonable suspicion of drug crime provide[s] the necessary Fourth Amendment basis for [a] prolonged traffic stop.” *See Powell*, 732 F.3d at 372. However, “[r]easonable suspicion is insufficient to permit a general search under the Constitution.” *Id.* “An exception to the Fourth Amendment’s warrant requirement exists when a police officer has probable cause to search an

automobile for contraband.” *Id.* (citing *Almeida-Sanchez v. United States*, 413 U.S. 266, 269 (1973)). Here, the same facts that support Officer Mosby’s reasonable suspicion of a drug crime are sufficient to provide probable cause to search the vehicle.

The officers corroborated the CS’s tip that it could obtain heroin from Defendant when they engineered and executed the controlled purchase and surveilled Defendant from the moment he arrived at the location of the drug transaction until he was stopped by Officer Mosby. Although Defendant argues that the officers lost sight of Defendant and the CS when they entered the location where the transaction took place, the officers testified that they verified that the CS purchased heroin from Defendant. The drug transaction, provided Officer Mosby with probable cause to believe that the vehicle used to complete the transaction contained fruits and instrumentalities (specifically, additional narcotics, drug paraphernalia, storage baggies, drug ledgers, cell phones, cash, “buy” money, weapons, etc.) of the narcotics transaction. *See United States v. Tuley*, 546 F.2d 1264, 1267 (5th Cir. 1977) (“Thus, to justify the stop and search without a warrant of the vehicle driven by [the defendant] in the present case, we must find that the officers had probable cause to believe that it contained contraband.”); *see also Powell*, 732 F.3d at 372 (finding an informant’s tip, when corroborated by officers, is sufficient to establish probable cause to search an automobile for contraband). The large sums of cash and methamphetamine pipe found on Defendant when he was lawfully searched and seized further support that there was probable cause to search the vehicle driven by Defendant for additional narcotics and the “buy” money utilized in the narcotics transaction—whether or not the canine alerted to drugs.

Finally, “[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.”

California v. Acevedo, 500 U.S. 565, 570 (1991). Thus, if the officers had probable cause to search the vehicle, it does not matter that the drugs and gun found during the search of the vehicle were located inside a closed backpack.

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To summarize, Officer Mosby had reasonable suspicion to stop Defendant's vehicle for a traffic violation and drug crime. Moreover, Officer Mosby was justified in prolonging the stop beyond the parameters of a regular traffic stop. Based on the information communicated to him and the events that transpired during the stop, Officer Mosby had probable cause to arrest Defendant and search the vehicle.

IV. CONCLUSION

Based on the foregoing, the Court **DENIES** Defendant's Motion to Suppress. (Doc. 34).

It is so **ORDERED**.

SIGNED this 20th day of November, 2019.

A handwritten signature in black ink, appearing to read "David Counts", with a stylized star or asterisk symbol to the right of the name.

DAVID COUNTS
UNITED STATES DISTRICT JUDGE